

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In Re:

Charles A. West and Loyal A. West

Chapter: 7

Case No.: 19-11891-1-rel

Hon. Robert E. Littlefield, Jr.

Debtor.

MOTION FOR RELIEF FROM AUTOMATIC STAY

NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for New Residential Mortgage LLC, a secured creditor of the above-named Debtors, moves the above-entitled Court for an Order granting relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) to permit it to proceed with an action to foreclose its mortgage with respect to certain real property of the Debtor, commonly known as 69 Lakeview Drive, Holmes, NY 12531 (the “Property”) and awarding NewRez LLC d/b/a Shellpoint Mortgage Servicing its attorney’s fees and cost associated with the Motion. As grounds for said Motion, it is hereby alleged as follow:

1. On October 13, 2004, the debtors, Charles A West and Loyal A. West (“Debtors”) executed and delivered a Note to ABN AMRO MORTGAGE GROUP, INC., in the amount of \$297,500.00 in connection with the Property. A copy of the Note is attached hereto as Exhibit “A”.

2. In connection with the Note and as security for the loan, on September 29, 2017, Debtor executed and delivered a Mortgage to ABN AMRO MORTGAGE GROUP, INC. (“ABN”), in the amount of \$297,500.00 on the Property. The Mortgage was recorded on December 9, 2004 in the Dutchess County Clerk’s Office in Document Number 01-2004-31641. A copy of the Mortgage is attached hereto as Exhibit “B”.

3. On March 23, 2016, CitiMortgage, Inc. Successor by Merger to ABN AMRO Mortgage Group, Inc., assigned its Note and Mortgage. The Mortgage was assigned by virtue of the written Assignment to Ditech Financial LLC F/k/A Green Tree Servicing LLC, which Assignment was recorded in the Office of the Clerk of Dutchess County on March 30, 2016, as Document #01-2016-552A. A copy of the Assignment is attached hereto as Exhibit “C”.

4. On September 5, 2019, Ditech Financial LLC F/k/A Green Tree Servicing LLC assigned its Note and Mortgage. The Mortgage was assigned by virtue of the written Assignment to New Residential Mortgage LLC, which Assignment was recorded in the Office of the Clerk of Dutchess County on September 16, 2019, as Document Number 01-2019-51279A. A copy of the Assignment is attached hereto as Exhibit “D”.

5. Debtors filed a petition for relief under Chapter 7 of the United States Bankruptcy Code in this Court on October 17, 2019.

6. In the Statement of Intention within the Petition, Debtors intend to surrender the Property.

7. According to the 362 worksheet executed by Anita Robertson, a Bankruptcy Case Manager with NewRez LLC d/b/a Shellpoint Mortgage Servicing, the Debtors are due for the November 1, 2019, post-petition mortgage payment.

8. The debtor is in arrears to Movant in the amount of \$85,466.97 for 30 months of payments from June 2017 to November 2019.

9. The total indebtedness was approximately \$282,148.63 as of November 15, 2019.

10. NewRez LLC d/b/a Shellpoint Mortgage Servicing also seeks relief for any installment that becomes due and is unpaid on the return date of this Motion. The foregoing

does not represent any accrued late charges, corporate advances, escrow advances and any amount which may be due for costs and attorney fees which may be allowed by the Court. NewRez LLC d/b/a Shellpoint Mortgage Servicing may be required to advance the funds necessary to pay real property taxes or risk irreparable harm to its security interest as a result of Debtors' default.

11. By reason of the foregoing, NewRez LLC d/b/a Shellpoint Mortgage Servicing, its servicing agent, nominees, successors and/or assigns should be permitted to take all necessary action to adequately protect its security interest.

12. It is requested that, in the event that an Order Granting Relief from the Automatic Stay is granted, that such Order shall survive any conversion.

13. Shellpoint specifically requests permission from the Honorable court to communicate with the Debtors and Debtors' attorney to the extent necessary to comply with applicable non-bankruptcy law.

14. In the event that an Order Granting Relief from the Automatic Stay is granted, the Trustee shall receive notice of any surplus monies received.

WHEREFORE, NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for New Residential Mortgage LLC ("Shellpoint") requests that this Court enter an Order granting Shellpoint, its servicing agent, nominees, successors and/or assigns relief from the automatic stay, together with Shellpoint's attorneys' fees and costs in the amount of \$831.00, and Shellpoint be granted permission to communicate with the Debtors and Debtors' counsel to the extent necessary to comply with applicable non-bankruptcy law,

that in the event that an Order Granting Relief from the Automatic stay is granted, that such Order shall survive any conversion, the Trustee shall receive notice of any surplus monies received and such other and further relief as the Court may deem just and proper.

By: /s/ Richard J. Tracy, III

Dated: December 4, 2019